

STATE OF VERMONT

SUPERIOR COURT

ENVIRONMENTAL DIVISION
Docket No. 66-6-18 Vtec

Gurman NOV

ENTRY REGARDING MOTION

Count 1, Municipal DRB Notice of Violation OTR (66-6-18 Vtec)

Title: Motion to Vacate (Motion 2)
Filer: Glenn Gurman
Attorney: Nathan H. Stearns
Filed Date: October 15, 2018

No response filed

The motion is GRANTED.

This matter is an appeal of a May 30, 2018 Norwich Development Review Board (DRB) decision finding zoning violations at Glenn Gurman's property at 186 Kendall Station Road in Norwich, Vermont (the May 30 Decision). Mr. Gurman asks the Court to vacate the May 30 Decision as the DRB was without jurisdiction to render the such a decision.¹ No other party has filed a response to the request to vacate.

24 V.S.A. §§ 4451 and 4452 empower municipalities to remedy violations of municipal regulations. Section 4451 provides for daily fines for violations, however, a landowner is entitled to written notice of the alleged violation and seven days to cure the violation. In this matter, no action can be brought because no written notice of an alleged violation was provided to Mr. Gurman.

Section 4452 creates the right of a municipality to institute an action in this Court to correct or prevent a violation. Section 4452 expressly states that it is the Administrative Officer who is empowered to bring the action. Mr. Gurman offers in his motion to vacate that the Norwich Zoning Regulations only authorize the Zoning Administrator and the Town Manager to issue notices of violation. Only if a zoning administrator, or duly authorized Administrative Officer, issues an enforcement decision pursuant to 24 V.S.A. § 4452 do interested parties have a right to appeal that decision to the DRB, and subsequently this Court, for review. See 24 V.S.A. § 4465; 24 V.S.A. § 4471. In this matter, the Zoning Administrator never issued a notice of violation. Thus, § 4452 did not trigger any authority of the DRB to undertake any review.

¹ We consider this a motion to dismiss for lack of subject matter jurisdiction pursuant to V.R.C.P. Rule 12(b)(1).

We therefore **VACATE** the DRB's May 30, 2018 Decision and **GRANT** Mr. Gurman's motion to dismiss. Our decision does not limit the Zoning Administrator's authority to act pursuant to 24 V.S.A. §§ 4451 and 4452. This completes this matter.

So ordered.

Electronically signed on October 31, 2018 at 01:42 PM pursuant to V.R.E.F. 7(d).

A handwritten signature in black ink, appearing to read "Tom Walsh", with a stylized flourish at the end.

Thomas G. Walsh, Judge
Superior Court, Environmental Division

Notifications:

Nathan H. Stearns (ERN 3585), Attorney for Appellant Glenn Gurman
Interested Person Town of Norwich
For Informational Purposes Only Rod Francis
Interested Person John Eller
Interested Person Roger Blake